

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

ECOFACITOR, INC.,

Plaintiff,

v.

ECOBEE, INC.,

Defendant.

Case No. 6:20-cv-00078-ADA

JURY TRIAL DEMANDED

ECOFACITOR, INC.,

Plaintiff,

v.

ECOBEE, INC.,

Defendant.

Case No. 6:21-cv-00428-ADA

JURY TRIAL DEMANDED

LEAD CASE

**NOTICE OF MOOTNESS REGARDING
PRIOR MOTIONS FILED BY DEFENDANT IN THE -00078 CASE**

Defendant (“ecobee”) hereby provides this notice of mootness regarding four motions previously filed by ecobee in the -0078 case (D.I. 88, 90, 91, 92).

As background, on November 19, 2021, ecobee filed the following motions in the -0078 matter: (i) Motion to Strike New Infringement Theories in Plaintiff EcoFactor Inc.’s Expert Report of Robert Zeidman Regarding Infringement By ecobee (-00078 Case, D.I. 90); (ii) ecobee’s Daubert Motion to Exclude the Damages Opinion of Dr. Kennedy (-00078 case, D.I. 91) (iii) Defendants’ Joint Motion for Summary Judgement of Subject Matter Ineligibility Under 35 U.S.C. Section 101 (-00078 Case, D.I. 88); and (iv) Defendants’ Joint Daubert Motion to Exclude Certain Testimony of Dr. Palmer (-00078 case, D.I. 92) (collectively, the “-00078 motions”). At the time of filing of these motions, EcoFactor was asserting infringement of both U.S. Patent No. 10,534,382 (the ’382 patent) and U.S. Patent No. 8,738,327 (“the ’327 patent) against ecobee.

On June 3, 2022, EcoFactor dismissed its allegations of infringement as to the ’382 patent against ecobee. *See* -00078 Case, D.I. 144. As such, the only remaining patent asserted against ecobee in the -00078 case is the ’327 patent.

On July 25, 2022, the -00078 Action and the -00428 Action were consolidated. *See* -0078 Case, D.I. 146. Pursuant to the Court’s amended schedule entered on December 15, 2022, the dispositive motion deadline and Daubert motion deadline for the -00428 Case was set for December 30, 2022. *See* -00428 Case, D.I. 64.

Pursuant to the Court’s direction, received by email on December 29, 2022, ecobee is “repackaging” the portions of the -00078 motions that related to the ’327 patent with its dispositive and Daubert motions in the -00428 case. Consequently, the previously-filed -00078 motions are now moot.

Accordingly, for the reasons above, and in light of the new motions being filed by ecobee on December 30, 2022, ecobee requests that the Court deny as moot the following previously-filed motions from the -00078 case:

- (i) Motion to Strike New Infringement Theories in Plaintiff EcoFactor Inc.'s Expert Report of Robert Zeidman Regarding Infringement By ecobee (-00078 Case, D.I. 90)
- (ii) ecobee's Daubert Motion to Exclude the Damages Opinion of Dr. Kennedy (-00078 case, D.I. 91)
- (iii) Defendants' Joint Motion for Summary Judgement of Subject Matter Ineligibility Under 35 U.S.C. Section 101 (-00078 Case, D.I. 88)
- (iv) Defendants' Joint Daubert Motion to Exclude Certain Testimony of Dr. Palmer (-00078 case, D.I. 92)

Dated: December 30, 2022

Respectfully submitted,

/s/ Jennifer Parker Ainsworth
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CERTIFICATE OF SERVICE

The undersigned certifies that counsel of record who are deemed to have consented to electronic service are being served on December 30, 2022, with a copy of this document via the Court's CM/ECF.

/s/ Jennifer P. Ainsworth
Jennifer P. Ainsworth